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HUMAN RIGHTS COMMITTEE

Sixty-third session

SUMMARY RECORD OF THE 1675th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 July 1998, at 10 a.m.

Chairperson: Ms. CHANET

later: Mr. BHAGWATI
(Vice-Chairperson)

later: Ms. CHANET
(Chairperson)

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GE.98-16900 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Israel (CCPR/C/81/Add.13)

1. At the invitation of the Chairperson, Mr. Lamdan, Mr. Schoffman, Mr. Blass, Mr. Galilee and Mr. Bardenstein (Israel) took places at the Committee table.

2. The CHAIRPERSON said that, before inviting the delegation to introduce the report, she would like to thank Israel for Mr. Kretzmer, who had been a member of the Committee for four years and had made a particularly effective contribution to its work. He was an excellent jurist with a rigorous and precise mind, and the Committee greatly appreciated his collaboration.

3. She invited the delegation, when introducing its report, to comment on any developments since April 1998, the date of the report's submission. She pointed out that, in order to facilitate dialogue with the Committee, the questions contained in the list of issues (CCPR/C/81/Add.13) had been regrouped according to subject matter.

4. Mr. LAMDAN (Israel) said that his delegation was pleased to have the opportunity of presenting the report of Israel to the Committee. It looked forward to engaging in a constructive and professional dialogue without political overtones, and learning how to improve the country's human rights performance and to achieve more effectively the purposes of the Covenant.

5. Mr. Bhagwati, Vice-Chairman, took the chair.

6. Mr. SCHOFFMAN (Israel) said that the report (CCPR/C/81/Add.13) was the most extensive review of the status of human rights in Israel that had been prepared to date. It had been disseminated to some 130 non-governmental organizations (NGOs) in the country, to senior judges, to heads of ministries, and to contact persons in the ministries who had provided the information. Those contact persons comprised an interdepartmental network for the exchange of information on human rights, and it was planned to make that network part of a permanent apparatus for reporting on implementation of the various human rights instruments to which Israel was a party. Unfortunately, owing to time constraints, it had not proved possible to have the report translated into the Committee's other working languages.

7. Israel was celebrating its fiftieth anniversary that year, in parallel with the fiftieth anniversary of the Universal Declaration of Human Rights. Following the adoption by the General Assembly of the so-called "partition resolution", providing for the establishment of a Jewish State and an Arab State in Palestine, Israel had declared its independence on 14 May 1948. Had the Arab world also accepted that resolution, there would have been no need to address many of the issues covered in the report.

8. Israel was proud of being both a Jewish State and a democratic State and, given the obstacles confronting it, the free, open and vibrant society it had developed was no small accomplishment. War had been declared on Israel from the beginning of its existence, and armed attacks against it had continued, with the result that the legitimate quest by the Arab minority in the country for equal rights had been impeded.

9. Despite those difficulties, the human rights situation had improved significantly over the years, and a recent study had shown that some 86 per cent of Jews and 83 per cent of Arabs would rather be citizens of Israel than of any other country in the world. Life expectancy had risen, as had the level of education and health care, and infant mortality, notably among the Arab population, had decreased dramatically.

10. Israel had no written constitution, but protection of human rights was assured through the courts, particularly the Supreme Court, to which petitions could be brought by anyone regardless of citizenship, residency or other status. Because decisions by the Supreme Court were universally binding, petitions often resulted in wide-ranging changes in government policy in such areas as prison conditions or discrimination against women. Through that process a judicial bill of rights had gradually evolved. The judiciary was completely independent, and judges were chosen by a special committee on which politicians were in a minority.

11. The Attorney-General also played a unique role in the protection of human rights in Israel. His legal opinions were binding and, if he refused to defend a particular action or policy that was being challenged in court, the Government had no choice but to accept that position. A large number of human rights cases were solved by the Attorney-General calling for significant changes in government policy even before the cases reached the courts.

12. In 1992, the judicial bill of rights had been supplemented by basic laws on human freedom and dignity and on freedom of vocation. The Supreme Court had stated that it would interpret those laws as guaranteeing freedom of religion, freedom of expression and freedom of movement, as well as other basic rights, and as prohibiting any form of discrimination. Three further basic laws, concerning legal rights, freedom of expression, and social rights, were currently under consideration.

13. NGOs, which played a central role in protecting human rights in Israel, received the fullest encouragement and cooperation from the Government, although they were often quite open in their criticism of its policies.

14. Turning to recent developments in the field of legislation, he said that the Freedom of Information Act provided for the right of public access to internal departmental regulations and for the right to obtain information on request. It also provided that claims to trade secrecy should not prevent the release of environmental information. An authority for the advancement for the status of women had been set up, and a law had been passed prohibiting sexual harassment. Corporations whose stock was publicly traded were henceforth required to ensure that their boards of directors included at least one woman. Under a new law establishing equal rights for persons with disabilities, employers were required to practice non-discrimination and

affirmative action in regard to the disabled. Lastly, in connection with article 6 of the Covenant (the inherent right to life), a "Good Samaritan law" had been adopted under which assistance to persons in mortal danger was obligatory.

15. Israel would continue its efforts to ensure full civil and political rights to all its citizens. It had great hopes that the achievement of peace with the Palestinians and with neighbouring States would help solve many of the problems that still remained. Discussion in the Committee, as well as the ongoing dialogue with NGOs, should clarify issues and remove misunderstandings, thus helping to attain the Covenant's goals.

Final list of issues to be taken up in connection with the consideration of the initial report of Israel (CCPR/C/81/Add.13)

16. The CHAIRPERSON invited the delegation of Israel to reply to the questions in paragraphs 1 to 10 of the list of issues.

17. Mr. SCHOFFMAN (Israel) said that his delegation had received the draft list of issues just before leaving Israel, and the final version only the previous day. Although, it had done its best to obtain the information asked for, it was unable to provide certain data due to the limited amount of time available.

18. One of the main aims of the Middle East peace process was the achievement of self-determination for all the peoples of the region, including the Palestinians. Under the 1978 Camp David Accords, Israel had recognized the concept of determination by the Palestinian people of its own future. At the 1991 Madrid Conference, efforts had been made to achieve a just, lasting and comprehensive peace settlement through negotiations on both interim self-government and permanent status. Those negotiations had led to the signing in 1993 of the Israeli-Palestinian Declaration of Principles on Interim Self-Government Arrangements, under which both parties had agreed to recognize "mutual legitimate political rights". That formulation had become part and parcel of the 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip. The next stage of the process was to be negotiations between the parties on the permanent status of the area.

19. External self-determination was taking place through a political process agreed to by the Palestinians and widely supported by the international community. Internal self-determination was already being practised: Palestinians in the West Bank and Gaza Strip, as well as those living in Jerusalem, had taken part in democratic elections under international supervision. As a result, they had their own freely-elected administration, governing all spheres of civil life, with no interference by Israel.

20. The question of how the policy of settlement was consistent with the policy of self-determination was among the issues still to be negotiated in the final stages of the Oslo process. It formed part of external self-determination, which would presumably lead to an acceptable outcome in due course.

21. On the matter of application of the Covenant (paragraph 2), the Legal Adviser to the Ministry of Foreign Affairs had, in a written reply, noted that the interpretation of article 2, paragraph 1, of the Covenant, under which States parties undertook to ensure rights to all individuals "within its territory and subject to its jurisdiction", had been exhaustively discussed by a number of eminent legal authorities. The central question which had faced Israel in preparing its report to the Committee was whether individuals resident in the occupied territories were indeed subject to Israel's jurisdiction. In the Cyprus v. Turkey case, the European Commission of Human Rights had equated the concept of jurisdiction with actual authority and responsibility in terms of civil or military control over the territory.

22. The problem became even more involved when consideration moved from the abstract question of jurisdiction and control to the more practical question of the actual extent of responsibilities for actions taken within a territory itself. One issue was the applicability in that territory of the norms and principles of international law pursuant to the Hague and Geneva Conventions, which covered situations involving foreign occupation within the general framework of a state of hostilities. The question thus arose to what extent such norms and principles were compatible with the provisions of the Covenant, which had been developed in the context of a normal relationship between State, Government, citizens and internal population.

23. Humanitarian law in armed conflicts had to be distinguished from human rights law. Under human rights regimes, the purpose was to protect the individual from loss of life and liberty and from cruel treatment or oppression by the State, inflicted on him either as a citizen or as a person temporally subject to the jurisdiction of the State in question. Humanitarian law in armed conflicts, on the other hand, was designed to balance the needs of humanity against the nature of warfare. His Government believed that the latter situation was much more pertinent to the case of the occupied territories.

24. Under the Middle East political process, which consisted of a series of agreements still in the course of implementation, Israel had transferred power over and responsibility for more than 90 per cent of the population of the West Bank and Gaza Strip to a Palestinian autonomous authority. The Palestinian Authority had a duty to exercise its powers in a manner consistent with internationally accepted norms and it would be inappropriate for Israel to include in its report information on, for instance, respect for freedom of religion or freedom of the press in the areas concerned, since it did not have the proper authority to do so.

25. According to the Interim Agreement and pending completion of the negotiating process, Israel still had certain powers and responsibilities that had not yet been transferred to the Palestinian Authority. Those included external and, to some extent, internal security and public order. In the exercise of those responsibilities, Israel remained committed to upholding the relevant norms and principles of human rights as set down in humanitarian law. The peace process was a dynamic one, and the territorial scope of autonomy was continually changing. Negotiations were currently under way on additional territory to be transferred in the forthcoming weeks to Palestinian jurisdiction and control.

26. In its transfer of powers to the Palestinian Authority, Israel was very much aware of the need to incorporate the human rights dimension. Those concerns were addressed specifically in article 19, entitled "Human rights and the rule of law", of the Interim Agreement on the West Bank and Gaza Strip. The clear and open reciprocal commitment in that provision would, it was hoped, ensure that human rights protection was maintained during the difficult interim period pending the achievement of an overall settlement.

27. Although Israel took the position that the Covenant and similar instruments did not apply directly to the current situation in the occupied territories, it would share with the Committee any information it had that might shed light on specific matters. In reply to the question on Southern Lebanon in paragraph 2, and conveying the views of the Legal Adviser to the Ministry of Foreign Affairs, he said that Israel had constantly maintained that the Southern Lebanese Army exercised independent responsibility for actions in that territory. The only activities conducted by the Israeli army in Southern Lebanon were measures of self-defence.

28. Turning to the question on equality and non-discrimination, he acknowledged that the Arab minority had suffered the consequences of the Israeli-Arab conflict in terms of obstacles to complete equality. Arabs were not conscripted for military service, though such service was often the springboard for subsequent employment in both the public and private sector. The Arab population had not asked to perform military service, however, and had in fact joined with the ultra-Orthodox population to block the passage of a law requiring a wider range of conscription.

29. Efforts were being made to limit the linkage between army service and the enjoyment of certain rights, such as benefits from national insurance institutes and social welfare institutions and rights to housing. Although it was both a criminal offence and a civil tort to discriminate against a person on the basis of race, religion or national origin, prior army service was still a decisive factor in the recruitment of staff in both the private and public sectors. Another factor was the security clearance required for some jobs, which was easier to obtain after military service. Under a bill currently before the Knesset, an appeals procedure would be instituted for people denied security clearance.

30. Despite such obstacles, employment of Arabs in the public sector was rising. Affirmative action and quotas to reserve certain positions for Arab applicants had been instituted within the civil service. The intention was to accustom people in the public sector to working with Arabs and thereby to promote the recruitment of Arabs. A number of Arabs had recently been appointed to the diplomatic service, and the number of Arab judges was on the rise. Between early 1994 and May 1998, the number of Arabs employed in the civil service had increased by 80 per cent.

31. Owing to many years of neglect of the Arab sector, there were wide educational gaps between Arabs and Jews, but they were closing. Allocations to the educational sector had risen dramatically in recent years. From 1960 to 1995, the proportion of Jewish students matriculating had jumped

from 11 per cent to 44 per cent, while the percentage of Arab students had risen from 1.9 to 19. That tenfold increase in Arab matriculation was not nearly enough, but it did represent an improvement.

32. Responding to the question on equality for Arab women, he said that no governmental policies were specifically geared to them. Training programmes, especially those for teachers, had had an impact on Arab women, particularly Bedouin women, and Arab women could benefit from affirmative action programmes for women and for Arabs in the public sector. There were some Arab women judges, but the political parties which the Arabs generally supported had yet to put forward women candidates.

33. Regarding discrimination against Arabs in the provision of goods, services and accommodation, he said he was not aware of any statistics on such discrimination. In many years of work for a civil rights organization, he had not seen a single complaint lodged against a hotel for refusing to give a room to an Arab. One complaint that had resulted in the award of compensation had involved admittance to a water park. Car rentals, too, had been the subject of complaints. In general, however, Jews and Arabs circulated freely and intermingled in hotels, restaurants and recreational facilities.

34. In the private sector, discrimination was explicitly prohibited in employment and higher education. The law governing restaurants, hotels and other facilities stated that services could not be denied on an unreasonable basis. The law on the provision of certain goods and services contained a similar clause. Israeli case law clearly demonstrated that denial of access on grounds of race, religion or sex constituted an unreasonable basis for denial. In such instances, the person had recourse before the courts. Several lower courts had held that there was a direct right of action using the Basic Law on Human Dignity and Liberty. The Supreme Court had ruled that that Law applied to both the Government and the private sector, and judges had applied it in a number of specific cases involving discrimination.

35. As to whether refusal to sell or lease land to Arabs was considered unlawful discrimination, he said there was a general prohibition against discrimination by the Government, so the question really applied to the private sector. There was no law on housing discrimination. The real estate market consisted primarily not of large-scale rentals of housing complexes, but of sales or rentals of their own property by individuals, who were entirely free to choose tenants or buyers.

36. The next question concerned the Bedouin, whose situation was the product of many years of neglect. The issue was being dealt with in different ways in the north and the south of the country. In the north, it had been decided to accord municipal status to eight settlements that had previously been considered illegal. There were 43 new town-planning schemes under preparation to allow for legal construction of housing in Arab villages. Under a special statute in effect for just over two years, 4,000 illegally built houses had been linked to the electrical grid. The tremendous impetus to change the situation in the north could be attributed to a major NGO, which had brought the issue of unrecognized villages to national prominence.

37. The situation was different in the south, where the Government had attempted to encourage the Bedouin, who were scattered over a very wide geographical area, to congregate in seven towns to facilitate the provision of municipal services. About half of the Bedouin had in fact moved. On 5 May 1998, the National Planning Council had approved a master plan for Bedouin housing in the south which referred to recognition of three or four new settlements. In the interim, an agreement had been reached on the provision of health services in the unrecognized villages. The Ministry of Education was organizing classes there, even though the buildings in which they were held were illegal. An effort was being made to ensure that those schools had access to adequate services in respect of water, electricity etc. All the unrecognized settlements in the north were situated within the purview of regional authorities, while in the south such settlements were generally outside the scope of the local authorities. The information and statistics on the Bedouin population in paragraphs 853 to 858 of the report were the most recent available.

38. Although Hebrew and Arabic were both official languages in Israel, it could not be said that they were on an equal footing. Hebrew was the mother tongue of 80 per cent of the population. The vast majority of Arabs were fluent in Hebrew. Some 75 per cent of all adult Arabs read a Hebrew newspaper at least once a week; the Hebrew press was the primary source of written information for the Arab community, even though there were a great many newspapers in Arabic. All Arab children learned Hebrew from their first year of schooling; increasing numbers of Jewish children were learning Arabic.

39. Hebrew was the primary language of government, commerce and higher education. Even though Arab members of the Knesset were entitled to speak Arabic in plenary meetings, they almost always chose to speak in Hebrew. The official use of Arabic was increasing, however. Rec services, civil service job offerings, inserts in pharmaceutical products, warning labels ent regulations required the publication in Arabic of tenders for goods and, machine labels and civil defence notices, inter alia. Following a petition to a high court by an NGO concerned with the legal rights of the Arab minority, the Public Works Department had agreed that all new road signs would be in Arabic as well as Hebrew.

40. Given that Hebrew was the dominant language, it was not surprising that a minimal knowledge of that language was a precondition for naturalization. Fluency or even a working knowledge of Hebrew was not required, however, and even the requirement of some knowledge of Hebrew could be waived for the spouse of an Israeli citizen. To his knowledge, the only instance in which knowledge of Arabic was required was for licences for bus drivers.

41. The Israel Broadcast Authority had a radio channel that broadcast for more than 18 hours a day in Arabic. Private radio stations were a relatively new phenomenon in Israel, but some were already broadcasting in Arabic. Much broadcasting was in neither Hebrew nor Arabic, but in English, many of the programmes having both Hebrew and Arabic subtitles.

42. Non-Jewish religious services were severely underfunded. About 10 per cent of the section in the budget of the Ministry of Religious Affairs earmarked for religious services went to non-Jewish religious

services. Jewish religious services were provided through religious councils that received 60 per cent of their funding from the local government and 40 per cent from the central Government. Since no religious councils existed in the Muslim or Christian sectors, the funding channelled through religious councils was unavailable to those sectors of the population. Salaries for the Muslim clergy were funded by the Government, and large investments were being made in the Christian holy places with a view to the expected influx of pilgrims in the year 2000.

43. The largest component in the budget of the Ministry for Religious Affairs was the funding of yeshivoth, institutions of higher religious learning in which students studied full time and were prohibited from working elsewhere. Two Muslim religious seminaries had recently been established, but they had not requested funding as institutions of higher religious learning, perhaps because they were funded as educational institutions by the Ministry of Education.

44. So far as the funding of non-Orthodox religious communities was concerned, it should be noted that the proportion of families belonging to the Reform, Conservative and Reconstructionist movements of Judaism in Israel was relatively very small. Those movements did, however, receive a certain amount of funding as a result of a court action taken by them in the face of resistance on the part of the Orthodox religious establishment.

45. Ms. Chanet resumed the Chair.

46. Mr. BARDENSTEIN (Israel) said that, since 1993, both sexes had to be represented on the Committee responsible for making appointments in the public sector. Since 1996, a new unit within the Civil Service Commission had assumed responsibility for promoting the hiring and advancement of women in the civil service, especially in senior positions. Specific quotas had been established in a number of government departments and agencies. The new unit's activities included ongoing periodic statistical studies which facilitated the work of the steering committee supervising the implementation of affirmative action legislation. A special committee had been set up to examine the wage gaps between men and women within the civil service. Wide-ranging information and training programmes specifically designed for persons responsible for the promotion of women were being implemented.

47. Over the past year, the unit had handled 100 complaints from women in the civil service, including 20 complaints of sexual harassment. It was currently engaged in developing new policies designed to ease the employment of single mothers in the civil service. In June 1997, women had accounted for 47 per cent of civil servants in the top seven grades and 39 per cent in the top three grades, a significant increase compared with the 1993 level of only 23 per cent of women in the top three grades. Mention should be made of a recent decision to admit women to courses for ship's captains in the Israeli navy. As for religious institutions, women were currently being accredited as pleaders in rabbinical courts, a post previously open to men only, and appropriate training courses had been inaugurated.

48. Mr. SCHOFFMAN (Israel) said that the question in paragraph 8 clearly arose from a misapprehension, since Israeli nationality could be transmitted by either the mother or the father.

49. As for the reservations to the Covenant entered by Israel, one of them related to the state of emergency and would be withdrawn once the emergency passed. The second reservation related to personal status under the religious laws, and he could not tell when and if it would be withdrawn. The issue was a fundamental one and a change in domestic law would be required before the reservation was withdrawn.

50. Israel had been living under a state of emergency since its inception and, despite the peace achieved with some of its neighbours over the past two decades, the situation was still tense in many respects. Terrorism, in particular, represented a threat not only to human life but also to Israel's efforts to seek peace with the Palestinians and with the neighbouring States. Terrorist attacks, whether by Palestinians or by extremist Jews, had the potential of setting the whole region ablaze. The emergency regulations were commensurate with a state of emergency that was all too real. Police searches and other invasions of privacy were accepted by the public as a necessity.

51. In all cases, the decision to search an individual was taken on the basis of his or her behaviour rather than of religious or other ideas. All emergency regulations were subject to judicial review and, as explained in paragraph 111 of the report (CCPR/C/81/Add.13), were by no means unlimited. They could be overturned if found to be ultra vires.

52. Many emergency regulations related to matters not covered by the Covenant; for example, during the Gulf War there had been a need for immediate legislation to ensure the rights of people who could not reach their place of work and to restrict the right of employers to dismiss them. Under the emergency regulations, that could be done without going to the Knesset.

53. There were currently no Israeli citizens or residents in administrative detention, although some orders limiting the movements of Israeli Jews and Lebanese nationals were in force. Detainees had to be brought before a court within 48 hours of arrest, and every administrative detention order had to be approved by the court. A newspaper could be shut down only if there was evidence that it was controlled by a terrorist organization. The question whether the provisions of the emergency regulations depended for their efficacy on the declaration of a state of emergency was a very interesting one: the precise status of the emergency regulations had not yet been examined in court for the simple reason that the emergency was not yet over.

54. The CHAIRPERSON invited the members of the Committee to address to the Israeli delegation any additional questions they might have concerning paragraphs 1 to 10 of the list of issues.

55. Mr. EL SHAFEI commented, with regard to the form and content of Israel's initial report (CCPR/C/81/Add.13), that it incorporated a great deal of information that might more appropriately have appeared in a core document but failed to provide any information on the situation in the occupied territories

under Israel's jurisdiction. In that respect, the report failed to comply with the Committee's guidelines, and additional information was required in the light of article 2, paragraph 1, of the Covenant.

56. With regard to the right of self-determination set forth in article 1 of the Covenant, he noted that, according to paragraph 36 of the report, Israel's recognition of the universal right to self-determination was embodied in its Declaration of Independence. In paragraph 6 of its General Comment 12, the Committee expressed the view that paragraph 3 of article 1 was particularly important in that it imposed specific obligations on States parties not only in relation to their own peoples but vis-à-vis all peoples which had not been able to exercise, or had been deprived of the possibility of exercising, their right to self-determination.

57. From the answers provided by Mr. Schoffman, it was evident that self-determination was among the issues to be determined at the last stage of the peace negotiations process between the Government of Israel and the Palestinian Authority. No mention had been made of the measures adopted by the Israeli authorities during the long period of occupation to change the territorial and demographic nature of parts of the occupied territories, such as the establishment of Jewish settlements, which certainly amounted to a violation of the Fourth Geneva Convention and of article 1 of the Covenant. In that connection, he referred to statements made by Israeli officials denying the Palestinians the right to establish their own national State and threatening retaliation at all levels if they attempted to do so, including the reoccupation of the territories transferred to the Palestinian Authority.

58. Mr. ZAKHIA, having endorsed Mr. El Shafei's remarks concerning article 1 of the Covenant, said that it was the responsibility of the political authorities of the State of Israel to determine the laws governing nationality and, in particular, the law of return. He found it difficult to understand how a State could grant nationality rights to Jews whose ancestors had never set foot in Israel while, at the same time, refusing the right of native Palestinians to acquire Palestinian nationality.

59. In connection with paragraph 2 of article 1, he said that confiscations of land and water by the Israeli authorities surely amounted to depriving a people of its own means of subsistence. The continuing colonization of the occupied territories by Jewish settlers also represented a very serious violation of article 1, and one which threatened the peace process between the Israeli and Palestinian peoples.

60. Mr. YALDEN said that the report of Israel was a very thorough one. Indeed, given the little time the members of the Committee had had to study it, it might even be described as intimidating, the more so as many of the documents and legislative texts referred to were not available to them. Faced with a truly bewildering number of agencies, institutions, regulations and provisions in law and custom, he intended to concentrate on the issue of equality and non-discrimination and on the manner in which legal provisions relating to those principles were implemented and monitored in the Israeli system.

61. According to paragraph 833 of the report, the fact that very few Arabs performed military service laid them open to discrimination in employment although military experience was rarely a bona fide requirement for the jobs they were seeking. Employers who inquired about military service were therefore guilty of "adverse effect discrimination".

62. The report acknowledged that minorities were vastly under-represented in public service posts despite strenuous efforts to remedy the situation. The 80 per cent increase - from 1,369 to 2,476 - over a four-year period in the number of minority employees in such posts appeared considerably less impressive when compared with the total number of civilian public service employees: over 80,000. Moreover, no information had been given about the proportion of minority employees occupying senior positions.

63. The delegation stated it was unaware of any cases of discrimination in the provision of goods, services and accommodation in the private sector, but the Committee had received reports of considerable discrimination from human rights groups and NGOs and would appreciate further information based on a more detailed analysis of the situation.

64. Although Arabic was an official language of the State of Israel, it seemed to be not quite so official as Hebrew. Having served as Language Ombudsman in Canada, he was familiar with the issues involved and was troubled by the argument that Hebrew tended to be the language that everybody used and that even the average Arab read a Hebrew newspaper once a week. If a language was official, it must enjoy equal status in all matters of public business. He found it odd, for example, that naturalization required a knowledge of Hebrew and that a knowledge of Arabic was not sufficient. There would certainly be an outcry in Canada if a knowledge of French was deemed insufficient for naturalization.

65. He noted that Arabic schooling came under the authority of the Jewish education system. In countries with minority language populations, it was generally considered to be of paramount importance that the minority communities should control the administration of their own schools. He would like to know whether Israel was intending to move in that direction.

66. The delegation had quoted some impressive figures regarding the increase in the proportion of women in the higher echelons of the public service. However, he judged from the report that improvements continued to be necessary in other areas, such as the pay differentials between men and women, and representation of women in very senior positions in public life in general and in the Knesset in particular.

67. He asked whether there was any independent machinery to monitor compliance with the various legislative requirements regarding non-discrimination. According to paragraph 29 of the report, the State Comptroller had been fulfilling the function of Public Complaints Commissioner (ombudsman) since 1971 but no details of his jurisdiction or of the kinds of complaints he had dealt with had been provided. A bewildering variety of monitoring and control agencies were mentioned in the report but virtually all of them seemed to be government-operated. Was the Civil Service Commission an

independent body? Was there any independent authority with jurisdiction in the area of human rights to which members of the general public could apply for redress?

68. Mr. KLEIN said he welcomed the opportunity to open a dialogue with Israel, on the basis of the frank and lengthy initial report, but regretted that it had not been submitted more promptly.

69. The international responsibility of a State for its acts extended to all territories and persons subject to its jurisdiction or authority, whether such authority was exercised legally or illegally from the standpoint of public international law or domestic law. The Israeli delegation had referred to a decision by the European Commission of Human Rights in the Cyprus v. Turkey case but he wished to draw attention to the Advisory Opinion of the International Court of Justice of 21 June 1971 on the legal consequences for States of the continued presence of South Africa in Namibia notwithstanding Security Council resolution 276 (1970).

70. The Court had found that South Africa, by occupying the Territory without title, incurred international responsibilities arising from a continuing violation of an international obligation and remained accountable for any violations of the rights of the people of Namibia. On the basis of that generally accepted view, Israel must comply with its obligations under general public international law in the occupied territories, particularly with respect to the fundamental human rights recognized as non-derogable even in states of emergency, for example the prohibition of torture and inhuman treatment, respect for human dignity in places of detention and elsewhere, and the prohibition of racial discrimination.

71. The words "within its territory and subject to its jurisdiction" in article 2, paragraph 1, of the Covenant could be interpreted objectively or from the point of view of the State party. Israel's position in that regard was somewhat ambiguous. The delegation had drawn attention to the ongoing peace process but the Government of Israel seemed determined to hold on to parts of the occupied territories. The continued construction of settlements perpetuated the ambiguous legal and political situation. In those circumstances, the burden of proving the argument that the Covenant did not apply in the occupied territories remained with Israel and he invited the delegation to revert to the matter later in the dialogue.

72. With regard to paragraph 8 of the list of issues, the misapprehension referred to by the delegation probably arose from the matrilineal determination of a person's status as a Jew, which had implications for the acquisition of nationality.

73. Mr. ANDO, having expressed the hope that Israel would be more punctual in submitting its next report, said that the Legal Advisor to the Israeli Ministry of Foreign Affairs argued that the Covenant applied in Israel proper and that the international humanitarian law governing armed conflicts applied in the occupied territories. He further argued that, in the latter case, a balance must be struck between military necessity and the protection of the rights of the inhabitants.

74. The humanitarian law applicable in those circumstances included the 1899 Hague Convention, as revised by the 1907 Hague Convention, the Fourth Geneva Convention of 1949 and Additional Protocol I to the Geneva Conventions. Those instruments established a basic code of conduct for an occupying Power, including respect for private property, prohibition of the collection of military information from the inhabitants, and retention, as far as possible, of the existing legal regime. Mr. Zakhia and Mr. El Shafei had drawn attention to some unacceptable measures relating, for example, to land ownership and access to water in the occupied territories. Additional Protocol I to the Geneva Conventions specifically required the occupying Power to secure the means of subsistence of the civilian population.

75. In the circumstances, he would like to know what kind of system existed to determine whether a particular measure adopted in the occupied territories was a violation of the principles of the humanitarian law governing armed conflicts and whether there was any mechanism whereby the victims of violations could obtain redress under the military occupation. As the occupation had continued for several decades and was becoming semi-permanent, it would appear that the difference between fundamental human rights law and humanitarian law was becoming less and less relevant. He would be grateful, therefore, if the delegation could specify the differences between the two legal systems and the practical implications of those differences in the occupied territories.

76. Ms. EVATT associated herself with the remarks by Mr. El Shafei and Mr. Klein regarding the application of the Covenant in the occupied territories. The Supreme Court exercised jurisdiction over the security forces operating in the occupied territories, not least in respect of compensation claims. The security forces effectively controlled all traffic in and out of those areas. Israeli citizens resident in the occupied territories enjoyed the same rights and freedoms as their fellow citizens in Israel proper while the freedom of movement of Palestinian residents was restricted and the planning and zoning laws operated by the authorities made it difficult for them to acquire building permits. Consequently, it was clear that Israel exercised de facto jurisdiction and did so in a way that seemed to discriminate between Israeli citizens and others.

77. Turning to the question of land and housing in Israel proper, she noted that 93 per cent of all land was managed by the Israeli Land Administration and that 10 per cent of that land was administered by the Jewish National Fund, which refused to lease land to Arabs. The Council of the Israeli Land Administration had no Arab member but the Jewish National Fund accounted for 50 per cent of its membership. She would like to know, therefore, whether it was true that the Jewish National Fund provided Jewish citizens with land for settlement but did not provide land on equal terms to Arabs. She understood that a case relating to discrimination in respect of land administration had recently been brought before the courts and asked whether there had been any outcome.

78. The delegation of Israel had not fully answered the question in paragraph 4 of the list of issues concerning recognized and unrecognized Bedouin settlements. According to the report, there were about 100 settlements with 50,000 inhabitants but the Committee would like to know more

about their size and how long they had existed. Some were apparently larger than Jewish settlements in the Negev region. The recognized settlements referred to in the report were presumably State-initiated settlements rather than Bedouin villages. She asked the delegation to identify them. Many unrecognized Bedouin settlements were apparently being deprived of services and facilities that were provided to Jewish settlements of comparable size. Was it true that people living in unrecognized villages had no opportunity to vote in local elections because there were no established authorities?

79. Mr. SCHEINEN, referring to the territorial application of the Covenant, drew attention to the Committee's early case law in connection with Uruguay. In a number of cases concerning that State party, it had taken the strict position that acts conducted by State authorities on foreign territory fell within the scope of the Covenant. In that connection, he referred to the phenomenon of extrajudicial executions allegedly undertaken by Israel on foreign territory. Some of those incidents had occurred after Israel's ratification of the Covenant: an incident in Malta in 1995, one in Gaza in 1996 and a failed assassination attempt in Jordan in September 1997. He wished to know whether Israel accepted responsibility for those incidents and whether there was any justification under the Covenant for such action. In any case, there could be no doubt that every State party was accountable for its direct action anywhere in the world.

80. Article 2, paragraph 1, of the Covenant referred to the duty to "respect and ensure" that the rights recognized in the Covenant were enforced and some authors held that there were actually three duties: to respect, ensure and promote the rights in question. While a portion of those duties might have been transferred to the Palestinian Authority, Israel continued to bear responsibility for the direct action of its civil or military authorities in the territories concerned. He therefore put it to the delegation that Israel was responsible under article 40 of the Covenant to report on all such action in the occupied territories.

81. It was imperative that reporting by Israel and monitoring by the Committee should continue regardless of any changes in respect of sovereignty. He wondered, therefore, whether the Government of Israel was willing to agree to an arrangement whereby the Committee would receive a report, possibly a supplement to the country report, on the situation in the occupied territories.

82. He had taken note of the argument by the Legal Advisor to the Israeli Ministry of Foreign Affairs concerning humanitarian law but wished to point out that article 4 of the Covenant made it quite clear that human rights law continued to apply even in states of emergency.

The meeting rose at 1 p.m.

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Sixty-third session

SUMMARY RECORD OF THE 1676th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 15 July 1998, at 3 p.m.

Chairperson: Ms. CHANET

later: Ms. MEDINA QUIROGA

later: Ms. CHANET

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GE.98-16924 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Israel (CCPR/C/81/Add.13, CCPR/C/63/Q/ISR/1) (continued)

1. The CHAIRPERSON invited Committee members to continue their questions on items 1 to 10 of the list of issues.

2. Mr. LALLAH, while joining other Committee members in thanking the Israeli delegation for a report which contained a wealth of detailed information, and for the helpful manner in which it had been presented, regretted having had insufficient time to make an in-depth study of the report, which was very dense and had arrived too late. He wished, first of all, to emphasize the Covenant's place in domestic law. He pointed out that, following the Covenant's entry into force for Israel in January 1992, two Basic Laws had been adopted, one on human dignity and liberty, the other on freedom of occupation. Like common law countries, Israel had not thought it advisable to enact a law or text that specifically enshrined the rights recognized in the Covenant, relying heavily on case law to ensure their enforcement. Certain common law countries, such as the United Kingdom, had very soon recognized the need for a written text to give effect to the provisions of the Covenant. The task of judges was greatly facilitated when they had a law to guide them in enforcing legislation. It would therefore be useful for the State party to consider laying down in a single instrument the provisions of the Covenant which it had undertaken to enforce. Not only were the two Basic Laws adopted since the Covenant's entry into force inadequate, but the second, the law on freedom of occupation, contained a provision whereby a new clause could not apply to a law adopted in the year following the Basic Law's entry into force. That highly restrictive provision called for clarification.

3. With regard to the territorial application of the Covenant, he could not subscribe to the Israeli authorities' view that the State of Israel was not obliged to report on the implementation of the Covenant in the territories that had passed to the Palestinian Authority. The granting of administrative autonomy in no way relieved Israel of its responsibility for the territories under international law. The rights enshrined in the Covenant belonged to individuals. He hoped that Israel's next report would deal with implementation of the Covenant throughout the territories.

4. Upon ratifying the Covenant, Israel had entered a reservation to article 23, on the ground that in Israel matters of personal status were governed by the religious laws of the parties concerned and that, insofar as those laws were inconsistent with its obligations under the Covenant, Israel reserved the right to enforce them. While article 23 did deal with the family and marriage, the religious laws could impinge on women's rights in areas other than private life, particularly their participation in the conduct of public affairs (art. 25). He asked whether any studies had been conducted on the subject. At the time of ratification Israel had also made a declaration regarding the perpetuation of the state of emergency since May 1948. The Israeli Government had also indicated in that declaration that Israel

derogated from its obligations under the provisions of article 9 of the Covenant, implying that only article 9 was affected. He sought clarification as to whether other fundamental rights, such as the right to life, the right to be treated with dignity while in detention, and the right to a fair trial, were not diminished.

5. Lord COLVILLE also welcomed the Israeli delegation, which had presented a very detailed report. Two extremely encouraging aspects were the transparency with which the report had been presented and the opportunity afforded to non-governmental organizations to make an input. He would limit his remarks to the state of emergency, which had remained in force ever since the British Mandate and therefore continued to cause concern. From the United Kingdom's experience with the terrorism rampant in Northern Ireland, enforcement of emergency laws should be kept to a minimum. It was therefore difficult to see why emergency regulations extended to certain economic sectors, as mentioned in paragraph 115 of the report. Furthermore, since the Knesset was called upon to renew the powers conferred by the emergency provisions every year, did it first receive a report justifying the continued application of the emergency provisions?

6. While the Israeli delegation had explained that the renewal of administrative detention could be challenged and reviewed, he knew that the review concentrated on the propriety of the detention measure and not on the merit. Although administrative detention was also practised in the West Bank and the Gaza Strip, the report was silent on that matter. He had seen an administrative detention order bearing the signature of a colonel, which showed membership of a particular organization as the motive. It was unclear why, if persons placed in administrative detention were reputed to threaten the life of the nation, they were not tried as suspected criminals in the ordinary courts, the only effective way of fighting terrorism. Lastly, he wondered whether administrative detention orders were monitored by the Knesset.

7. Ms. MEDINA QUIROGA, returning to the questions asked by other Committee members concerning implementation of the Covenant in the occupied territories and the Bedouins' living conditions, said she would comment on the application of the state of emergency. The emergency provisions were not properly enacted under Israeli law, which did not spell out the circumstances in which a state of emergency could be declared. Since the Covenant was not directly implemented in Israel, that omission raised problems with regard to article 4 of the Covenant. Administrative detention was authorized by the powers conferred under the state of emergency, and military order 1229 of 1988 established the possibility of challenging an administrative detention order through a superior officer. Perusal of the records of hearings clearly showed that those remedies did not deal with the merit of the accusation - because of the confidential nature of the subject, among other things - and that it was therefore a purely formal review. That procedure was all the more alarming since it was exactly the way the military tribunals in Chile had operated during the dictatorship. In addition, a six-month administrative detention order could be constantly renewed, so that a person eventually served a sentence without ever going to trial, in violation of article 14 of the Covenant. It also emerged from the report that the 1992 Basic Law: Human Dignity and Liberty could not be invoked and had no effect on previously

enacted legislation. She asked the delegation to explain how that administrative detention procedure could be considered compatible with articles 2, 12 and 14 of the Covenant, and with article 7, considering as she did that such a long period of detention without trial constituted cruel and inhuman treatment.

8. The authors of the report had stressed that the right to equal treatment was tantamount to a supreme constitutional rule. That statement was contradicted by a number of facts that emerged from the report itself, from the delegation's statements and from information supplied by non-governmental organizations. Accordingly, there was real discrimination in the area of military service, the funding of religious institutions (para. 544), the application of certain Jewish laws to the entire army (para. 549 (h)), form of worship (para. 558), the possibility of changing one's religion (para. 567) and in matters of marriage and divorce (paras. 576, 577, 696 and 702). Moreover, the manner in which Arab women could acquire citizenship was discriminatory, and there was evident discrimination in administrative detention, to which Jewish settlers were rarely subjected. There was no general law prohibiting discrimination, and the narrowing of the gap between the living conditions of Arabs and Jews seemed to have halted in 1996. No affirmative action was being taken in favour of Arabs, recognized as disadvantaged by everyone, even in Israel, and there was no institutional mechanism for enforcing labour legislation. The situation of women was marked by widespread discrimination. Despite the delegation's contention that measures had been taken, the incidence of violence against women continued to be very high: according to the Israeli police, 200,000 women had been the victims of such violence in 1994. The traffic in women for purposes of prostitution was an acknowledged practice, and nothing was being done to improve the situation of Arab women. The most important aspect was the problem of the personal laws which established discrimination in matters of marriage, divorce, child custody and inheritance. Moreover, those laws were enforced by religious tribunals, from which women were excluded. Israel had entered a reservation with regard to article 23 (right of the family to protection), justified by the existence of religious personal laws. Such a sweeping reservation raised serious questions, and could even compromise the very purpose of the Covenant and the international human rights protection instruments. Many articles of the Covenant, especially articles 18 and 14, could thus be jeopardized. She saw no justification for such a broad reservation, which appeared to consolidate discrimination against a section of the population. She asked the delegation to shed light on the matter.

9. Mr. BHAGWATI welcomed the very detailed report, but regretted that he had not had more time to study it. Thus far, the dialogue with the delegation had, all in all, been rewarding. Like Lord Colville, he regretted the fact that the rights enshrined in the Covenant were not set forth in a specific law, because the two Basic Laws far from sufficed to give effect to all the rights protected in the Covenant. The Government should consider promulgating a bill of rights, as several common law countries had done or were envisaging. He had read with dismay that no law adopted by the Knesset could be challenged after a certain number of years. He hoped he had misunderstood, because a law that would run counter to the Covenant should be challengeable at any time.

10. There was a great deal to be said about the issue of administrative detention already raised by other Committee members. If it was true, as the Israeli authorities claimed, that administrative detention was necessary for combating terrorism - which he doubted - it was essential that safeguards be provided. A review by senior officers was obviously not sufficient and it was important that a judicial mechanism be put in place. Administrative detention orders could be renewed every six months for years on end, making it possible for some people to be detained for a five-year period. It was noteworthy, however, that only Palestinians remained in detention for such long periods, since Jewish settlers placed in administrative detention were never held for more than six months. That was discriminatory treatment, all the more evident since, according to information supplied by the non-governmental organizations, in the past five years 5,000 Palestinians had been placed in administrative detention as opposed to a mere 11 Jewish settlers. Such discrimination called for corrective measures. The same could be said of the daily lives of the East Jerusalem Arabs; a ministerial committee report, excerpts from which had been published in the 2 November 1995 issue of the Jerusalem Post, claimed that the Arab population of East Jerusalem had been totally neglected by the de facto Government and was experiencing grave economic problems, in addition to a complete lack of physical infrastructure. According to the non-governmental organizations, 14,000 Jews occupied 100 settlements in the Negev region and possessed 1.2 million dunums and 300 million cubic metres of water, while 110,000 Bedouins lived in 7 towns and 30 settlements without access to water or farmland. Those were all examples of discriminatory treatment for which a solution could be found if the State of Israel had a bill of rights.

11. Mr. POCAR said he wished to take up two issues which called for explanations that could be useful from the juridical viewpoint. The first concerned the enforceability of the Covenant in the occupied territories. In that connection, the question was not whether different sets of rules were applicable to different territories, but of recalling that, from the moment the Covenant was ratified, it was applicable to all territories over which the State party exercised control, even de facto control. It would also be interesting to discover whether other provisions of international law, especially humanitarian law, were enforced, in addition to the Covenant, in certain areas, in view of the special situation prevailing there.

12. The second question concerned the state of emergency. Upon ratifying the Covenant, Israel had made a declaration on the existence of a state of emergency since 1948. One might wonder what interpretation should be put on that statement, now that the 19 May 1948 law on the state of emergency had been abrogated and replaced by new provisions whereby the Knesset could declare a state of emergency for one year. Inasmuch as the Knesset had exercised that power in 1996 and 1997, he wished to know whether the Secretary-General of the United Nations had been informed, pursuant to article 4 of the Covenant, since a new declaration was involved; the international community had a right to know which articles were being derogated from and the scope of the derogation, in order to ascertain whether the conditions laid down in paragraphs 1 and 2 of article 4 were being fulfilled.

13. The CHAIRPERSON invited the Israeli delegation to reply to the various questions asked by Committee members.

14. Mr. SCHOFFMAN (Israel) said that in connection with the negotiations for the self-determination of the Palestinians, all issues (land, water, etc.) were examined without preconditions, as had occurred during the negotiations with Egypt. The position adopted at Oslo was that self-determination would be realized with the mutual consent of both parties, and everything suggested that things would move in that direction. With regard to the Covenant's enforceability, Israel did not deny its responsibility for the rights of the inhabitants of the occupied territories or the Israeli army's actions there. Nevertheless, its reporting responsibility could not extend to the territories for the simple reason that areas such as newspaper licences or freedom of religion were a matter for the Palestinian Authority alone. One solution would be for the report to be presented by a joint delegation, but he doubted whether the Palestinians would agree to appear before the Committee alongside representatives of the Israeli Government. In any event, Israel would not fail to provide all the information it could muster concerning the territories. With regard to the general obligations deriving from international law, as opposed to the reporting obligation pursuant to article 40 of the Covenant, Israel had always fulfilled its obligations under the Geneva Conventions, even when the occupation of the territories had been total. In his country's view, it was international humanitarian law, with all its attendant guarantees, that applied to the territories, rather than the system established by the Covenant; there were definite differences in the two protection systems, which meant that they could not be superimposed.

15. In reply to a question on a possible mechanism to monitor Israel's fulfilment of its obligations, he drew attention not only to the internal monitoring procedures of the judicial authorities and the Ministry of Justice, but also to the possibility of recourse to the courts, notably the Supreme Court, for any injury sustained following an Israeli action. All States parties and organs were also obliged to respect the rights enshrined in the Basic Laws, including the right to human dignity.

16. The population statistics provided at the previous meeting related to citizens and permanent residents of the State of Israel and did not include Palestinians living in the territories. Building permits were issued by Israel in zones A and B, which were home to 97 per cent of the population, and by the Palestinian Authority in the sparsely populated zone C. However, that situation was likely to change shortly since the current period was one of transition.

17. It was difficult for his delegation to respond to questions relating to information provided by the non-governmental organizations cited by Committee members, since it had had no previous knowledge of it. It could, however, state that, in known cases of discrimination, in the provision of goods and services, the competent authorities had issued instructions to crack down on those responsible, pursuant to the laws in force. There were numerous cases in which victims of discrimination had received compensation, and remedies did exist. For instance, when a teachers' association to which land had been allocated had decided to apportion lots only to persons who had performed

military service - in other words, exclusively to Jews - the matter had been referred to the Supreme Court and the Department of Public Prosecution had quashed the decision even before any judicial ruling had been issued.

18. On the subject of the use of Hebrew and Arabic, it was wishful thinking to expect the language of a minority group to be equal in status to the language of the majority of the population. That being said, Arabic was being increasingly used and the persons in charge of Arab schools, administered like Jewish establishments by the Ministry of Education, were quite at liberty to set the syllabuses. More emphasis was placed on Arab culture and history and on the Muslim religion.

19. The ombudsman's duties were performed by the State Comptroller, who received complaints and made recommendations, which were usually implemented. He was totally independent of the Executive Branch. In addition to the Comptroller, there was a High Court of Justice, to which any person who considered himself injured could appeal directly without the need for a lawyer's services. The Bedouins of the north had the right to vote in municipal elections and elected their representatives to the regional bodies. Those of the south did not have the right to vote because there was no regional administrative body. However, that situation was likely to change soon.

20. One Committee member had asked whether Israel planned to enact a law based on the Covenant. Deliberations had in fact been held within the Ministry of Justice in 1989 with a view to the preparation of a draft bill of rights, based on the Canadian model; however, its enactment was encountering political obstacles arising from complex historical events. Human rights and fundamental freedoms were protected by the Basic Law: Human Dignity and Liberty, enacted in 1992, according to the interpretation put on it by judges. Legislation also abounded in criminal law, and established, among other things, that a person arrested must be brought before a judge within 24 hours and must have access to a lawyer; the institution of a public defender's office was to be extended to the entire country by the end of 1998. Many principles set forth in the Covenant existed in Israel's laws, without appearing in the Bill of Rights.

21. The application of the state of emergency had given rise to questions. Emergency measures were used in some cases to legislate on and meet short-term needs, for instance when the country was confronted with a massive influx of immigrants and needed to alter its plans, or to address a new housing situation. Such measures did not entail derogation from the rights set forth in the Covenant, nor did they constitute violations of the Covenant. Certain emergency regulations might infringe human rights, but in some cases they protected them, as during the Gulf War when measures had been taken to protect the rights of workers. Emergency regulations were sometimes used in the event of a strike by State agents, in order to provide a minimum health service and other emergency services, matters on which the trade unions did not really wish the Government to legislate. It was true that the proclamation of the state of emergency had twice been extended and that the State of Israel had not notified the Secretary-General, doubtless owing to a misinterpretation of article 4 of the Covenant; it had understood that it needed to notify the date on which the derogations were terminated, whereas suspension of the

application of that article was still in force. The situation with regard to monitoring of the declaration of the state of emergency had altered significantly in 1996. Since that time, if the Government wished to renew the declaration, it needed to submit the request to the Knesset before the initial period had expired. The Knesset had set up a joint committee (Constitution, Law and Justice) which had requested the Ministry of Justice to present a report with a full listing of the laws governing emergency measures and other measures relating to the state of emergency. As a result, the State and the Government were accountable, with the aim of avoiding a move towards a permanent state of emergency. The Knesset received inputs and opinions not only from its own committees, but also from non-governmental organizations.

22. On the subject of administrative detention, his delegation was eager to clear up a misunderstanding: an appeal against the administrative detention measure was possible in respect not only of the merit but also the procedure, as evidenced by various examples. The appeal was lodged first with the President of the District Court, then with the Supreme Court. Furthermore, the judge was called upon not only to examine, but also to approve, the administrative detention measure. In reality, the detention was ordered by the administrative authority but needed to be upheld by the judicial authority, which examined its merit. The Supreme Court had been known to invalidate an administrative detention measure. Administrative detention was ordered in cases where the aim was to avoid a trial in the ordinary (criminal) courts, when information supplied by informers could not be divulged at a public hearing. One could well imagine that a Palestinian testifying in court for the prosecution against another Palestinian was risking his life, hence recourse to administrative detention.

23. As to whether the Knesset exercised surveillance over the territories, he said it was obvious that it did not make laws for the territories, but could seek information and summon a minister to answer deputies' questions and attend committee hearings. In addition NGOs submitted communications to the Knesset, which also summoned officials from the Ministry of Defence to give clarifications. Administrative detention measures taken in the territories had to be referred to the judicial authority for consideration.

24. The fact that the Arab minority in Israel was not conscripted had been invoked as an act of discrimination. However, the debates in the Knesset showed that that minority was in favour of the status quo. A plan was afoot to create compulsory and universal national service which would bestow on persons performing their military service the same rights as members of the army.

25. With regard to the loss of Israeli nationality through marriage to someone residing in the territories, there had indeed been cases in which women in that situation had been asked to renounce their nationality. However, nationality could not be automatically relinquished and for quite some time women had no longer been asked to relinquish their nationality. Consequently, an Israeli citizen marrying a resident of the territories did not lose that nationality.

26. Reference had been made to discrimination between Jews and Arabs with regard to renewal of administrative detention measures. That form of

detention was only used when absolutely essential; furthermore, the overall numbers of detainees had fallen considerably. No specific statistics on detained Arabs were available. Even though there were disparities between Jews and Arabs in Israel, it should also be noted that Arabs residing in Israel enjoyed the same rights as Israelis with regard to the national insurance scheme, medical protection and other social security benefits.

27. Mr. BLASS (Israel) said that loans totalling 100 million new Israeli shekels had been allocated for East Jerusalem in 1997 for construction of new roads, a sewerage system and, more generally, works that had been neglected in previous years. The question of the Bedouins in the Negev had been raised again. His delegation had not claimed that there was parity or equality between Jews and Arabs in access to services, but had said that an effort was being made to redress the situation as far as possible, under the new blueprint which covered more municipal authorities.

28. Ms. Medina Quiroga took the Chair.

29. The CHAIRPERSON invited the Israeli delegation to continue its replies to the written questions in the list of issues (CCPR/C/63/Q/ISR/1).

30. Mr. BLASS (Israel), replying initially to the first two questions under item 11 concerning the right to life and the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, said that his delegation would restrict its remarks to the Israeli security forces, which were responsible for some deaths, without supplying precise figures about the number of Palestinians or minors under 18 who had died. According to data supplied by the Israeli Defence Forces, between 1987 and 1997, the years of the intifada, approximately 100 Palestinians had been killed in incidents involving the security forces. Several hundred Israeli soldiers and civilians had also died as a result of Palestinian aggression.

31. His delegation had no precise figures for complaints filed in connection with State agents' unjustified use of firearms, but they had been numerous. The information available concerned prosecutions in the military tribunals over the past 10 years: some 50 soldiers had been tried in the military courts for using their weapons in a manner contrary to military instructions. In some cases death or injury had been inflicted, even on children. Those statistics did not encompass policemen, or members of the border patrols or other security forces. Consequently, the number of charges was higher than mentioned, and most persons accused had been convicted, except for a handful who had been acquitted.

32. He could not tell the average sentence passed on those convicted of such actions, because each sentence had to be placed in the context of the act, during which the perpetrator was often being stoned, threatened by Molotov cocktails, or in peril of his life. However, soldiers and members of the security forces had orders to use weapons with the utmost caution. Sentences consisted of imprisonment or suspended imprisonment and possible demotion. Victims could be compensated if they brought a successful civil redress action. While his delegation did not know how many petitions had been submitted, it could supply the total amount of the indemnities paid to

Palestinians since the beginning of the intifada, which was approximately 100 million shekels, or over $30 million. He should point out that the victims allowed some time to elapse before submitting their compensation claims, which had multiplied in recent years; accordingly, some 28 million shekels in damages had been paid to Palestinians in 1997 alone. Giving some specific examples of sentences imposed on persons tried and found guilty, he first mentioned the case of a sergeant found guilty of negligent homicide (punishable with 3 years' imprisonment) who had been sentenced to 9 months in prison and 21 months' suspended imprisonment. The second person convicted of homicide had been sentenced to one and a half years in prison, in addition to one and a half years' suspended imprisonment; the third soldier found guilty of homicide had been sentenced to one year in prison and two years' suspended imprisonment; a lieutenant found guilty of negligent homicide had been sentenced to six months' imprisonment, and another officer found guilty of negligent homicide had been sentenced to three months' imprisonment and six months' suspended imprisonment. Those were the harshest sentences passed on soldiers; other penalties were usually lighter. However, whether the sentences were imprisonment or demotion, they showed that the Israeli authorities took those occurrences greatly to heart.

33. The last question asked under item 11 concerned the possible effect of the proposed Intifada Compensation Law, which the Government had submitted to the Knesset one year earlier. That draft law was currently being studied by a Knesset committee; it was not known when the study would be concluded or what its outcome would be. While it was, therefore, too soon to go into the details of the text, it did preserve the right to appeal to the courts for reparation, but specified new rules for examination of those petitions. As it was, a new situation had arisen since the interim agreement and the withdrawal of the Israeli Defence Forces from the areas inhabited by Arabs. When a Palestinian submitted a request for compensation to a district court in Israel on the ground that a soldier had fired on him five years earlier when he was walking along minding his own business, it was very difficult to verify his statements, since the Israeli authorities no longer had access to Palestinian hospitals in Nablus, Hebron or Gaza, nor to the medical files; they could neither call Palestinian witnesses nor even visit the site to ascertain whether the plaintiff's description was accurate. The rules of evidence therefore needed to be adapted to the new situation created by the Israeli forces' withdrawal from the Palestinian territories. Moreover, in Israel such petitions could be filed within 7 years after the events; when the victim was a minor under 18 years of age, the 7-year period started when he reached the age of 18. It was therefore likely that the authorities would be receiving such complaints for many years to come, thus rendering verification difficult.

34. Turning to item 12 on the list, and the first question concerning the compatibility of the use of physical and psychological pressure during interrogation with the provisions of article 7 of the Covenant, he pointed out that it had been covered in the periodic reports submitted by Israel to the Committee against Torture and in replies to the questions raised by that Committee. It was no secret that the State of Israel was having to combat terrorist organizations that threatened the lives of innocent persons and that the interrogations conducted by the General Security Service (GSS) were

one manifestation of the struggle against those organizations, their aim being to discover in advance the plans of the terrorist groups: bombs, Molotov cocktails, use of firearms, suicide squads and car bombs.

35. At the same time, Israel was doing its utmost to observe acceptable norms consistent with the Covenant and the Convention against Torture. To preserve the lives of persons in Israel, Jews, Arabs, tourists and others, while respecting the dignity of the person under interrogation, posed a veritable dilemma, because an interrogation could not be conducted like a normal conversation between two adults, in which one answered the other's questions. People under arrest on suspicion of terrorist acts were specially trained not to answer questions during interrogation; they refused to reply because they did not wish to do so. If the Israeli authorities conducted an interrogation as though it were an ordinary conversation, they would be failing in their duty to preserve the security and lives of the people in Israel. The Israeli position was that by no legal standard whatever did the interrogation methods employed by the General Security Service to forestall acts of terrorism constitute acts of torture or cruel, inhuman or degrading treatment. Moreover, Israeli criminal law prohibited the practice of torture, and the Supreme Court had invoked that law in many of its cases.

36. GSS interrogation methods could not be described in broad terms because certain techniques were not always used - their use depended, rather, on the exigencies of the situation - and the decision was taken by the hierarchical superiors. The Landau Commission's guidelines authorized the use of a moderate degree of pressure on persons under interrogation. The Landau Commission had also mentioned the existence of the International Covenant on Civil and Political Rights in its report (of 1987), while specifying that the State of Israel was not bound by that instrument, which it had not yet ratified. The guidelines for GSS personnel suggested that the interrogator was not at liberty to inflict pressure tantamount to acts of torture or grievous harm to the person's dignity or honour ("pressure must never reach the level of physical torture or maltreatment of the suspect ... which deprives him of his human dignity").

37. The interrogations conducted by the GSS actually saved lives and averted terrorist acts, as attested to by the fact that some interrogations had served to uncover the plans of particular terrorist groups, and then to dismantle them. It cited the cases of groups that had prepared to launch suicide bomb attacks on markets and in bus stations in Jerusalem, Tel Aviv, Haifa, Tiberias and Eilat, to occupy embassies, kidnap soldiers and abduct eminent academics or media figures. The methods approved by the Landau Commission in 1987 could not be disclosed for obvious security reasons. The strength of the security service in a democracy was contingent upon the secrecy of interrogation procedures. Moreover, States parties had no obligation under the Covenant to publicize their interrogation methods, which would help terrorist groups by enabling them to prepare for questioning. His delegation nevertheless conceded that in certain cases a person under interrogation was handcuffed, which could be uncomfortable; a bag could be placed over his head to prevent him from recognizing other persons in the same room; and he could be deprived of sleep, although never for protracted periods. Lastly, the method whereby a suspect being questioned was shaken was rarely used.

38. His delegation could not supply figures concerning detainees in Israel and the occupied territories who had been subjected to the approved interrogation methods, not knowing in which year the period under consideration should begin. In any event, ever since the beginning of the Oslo process the number of detained persons subjected to interrogation had fallen spectacularly. They were now essentially members of terrorist organizations such as Hamas and the Islamic Jihad, inasmuch as Fatah had renounced terrorism to join the peace process with the Palestinians. He had no exact figures regarding the numbers of detainees in Israel and the occupied territories subjected to methods of pressure approved by the General Security Service, but assured the Committee that ever since the start-up of the Oslo process they had been declining spectacularly. Detainees currently subjected to that type of interrogation were mostly members of the Islamic Jihad and Hamas terrorist organizations.

39. In response to the question of how often the Supreme Court had refused applications from the General Security Service to set aside an injunction restraining the use of those methods, he said that as a general rule the appeal to the Supreme Court was made by the detainee himself, or sometimes by his lawyer, who, before he had even seen his client or learned whether he was being subjected to physical pressure, called for an interim order to prevent such pressure. The Supreme Court reacted within a very short time (48 hours at the most) and summoned those responsible for the investigation, who were required to explain the interrogation methods they employed. The Supreme Court often issued an interim order prohibiting physical coercion. It was rare indeed for the State security bodies to file a petition with the Supreme Court to set aside its ruling. He believed they had done so in three or four cases only; in at least one of them the Supreme Court had rejected the petition.

40. He could not say precisely when the latest ministerial guidelines on the use of special interrogation methods had been adopted or what those guidelines contained, but pointed out that those texts were reviewed every three months.

41. Ms. Chanet resumed the Chair.

42. Mr. SCHOFFMAN (Israel), replying to the questions referring to item 13 of the list, explained first of all that his delegation could only supply information on the cases of persons detained by the Israeli security forces, but not in regard to those that came under the Palestinian Authority. Any person imprisoned or detained - in the occupied territories or in Israel - by the Israeli police or army, the General Security Service, the Border Police or the Prisons Service could file a mistreatment complaint. In that connection, he referred Committee members to table 9 of the report (CCPR/C/81/Add.13), which covered complaints of unlawful use of force by police officers and investigation results.

43. The same complaint and investigation procedures applied to the remedies available to persons who had been victims of ill-treatment at roadblocks or during house searches. If the persons in question were border guards, members of the General Security Service or policemen, the investigation was conducted by a special department of the Ministry of Justice. If they were soldiers, the procedure came under the Army Criminal Investigation Division. Persons

claiming to be victims of ill-treatment were entitled to compensation, which they could claim in the occupied territories before the claims officer; they could also take the matter to an Israeli civil court.

44. Mr. BARDENSTEIN (Israel), replying to the first question under item 14 of the list, explained that the report of the State Comptroller's Office dealt with the situation in the Gaza Strip between 1988 and 1992, and that the territory was currently under the jurisdiction of the Palestinian Authority. That having been said, the law authorized the Knesset to refrain from publishing the State Comptroller's report for the reasons it determined. Contrary to normal practice, the 1995 report had not been published by the competent parliamentary sub-committee. The authors of the report had noted a number of disparities between the interrogation methods employed in the Gaza Strip and the Landau Commission guidelines, and considered that the General Security Service investigation unit had not displayed the degree of integrity expected of an essential State security body. The parliamentary sub-committee had made a close study of the report's findings and had formulated conclusions and precise recommendations, most of which had already been implemented. However, it had decided to keep the report confidential for security reasons. Following a number of meetings with senior officials of the bodies concerned, the sub-committee had decided that the General Security Service had patently learned lessons from the scrutiny of its activities, notably by establishing an oversight, supervision and follow-up procedure to ensure observance of the provisions and restrictions to be applied in interrogations. It had further determined that the frequency of deviations from the Landau Commission guidelines could not be tolerated and must not be ignored by the authorities. On the one hand, it considered that in the light of the circumstances and the gravity and imminence of danger, the General Security Service's investigation unit should enjoy all the resources needed to combat terror, including effective methods of interrogation designed to prevent terrorist attacks. However, the sub-committee stressed that Israel must strive to maintain an image of a society informed by the principles of respect for human rights, dignity and welfare.

45. In response to the question on the remedies available before the creation of the Department for Investigation of Police Misconduct, he said that they had been both civil and criminal. In the event of a complaint, the police had opened an investigation and communicated the results to the Department of Public Prosecution. In addition, the suspect had enjoyed immediate access to the Supreme Court at every stage of an interrogation.

46. A part of the draft law designed to implement the Goldberg Committee's recommendations, which dealt with the availability of retrial, had been adopted, thus amending the Courts Law. In that connection, he referred Committee members to the paragraphs of the report (CCPR/C/81/Add.13) concerning enforcement of article 14 of the Covenant, especially paragraph 458. Also, the section of the Goldberg Committee's recommendations which concerned the efficacy of convictions based solely or almost solely upon the defendant's confession had been incorporated into a draft law currently before the ministerial committee on legislation. In any event, that draft law did not envisage invalidating the Landau Committee guidelines.

47. Mr. BLASS (Israel), replying to questions under item 15 of the list, said that segregation was a preventive measure that could be imposed by the prison authorities for reasons connected with State security, maintenance of security or order and discipline in prison or to protect the safety or health of the person concerned or of other prisoners. It was not a punitive measure and did not therefore circumscribe the rights and privileges of those subject to it. The Prison Regulations established that that measure could not be applied to a detainee for more than 14 days if he could be transferred to another establishment. The measure could only be extended beyond 14 days by order of the prison warden, and in the event of a period exceeding eight months, with the agreement of the Commissioner of Prisons. By and large, the person segregated was incarcerated with other detainees who did not put his life in peril. He could take daily walks and receive family visits, but in a separate place. Solitary confinement was a disciplinary measure that could be imposed on a detainee who violated the regulations, and could only be ordered by the prison warden or his deputy, following an investigation and a hearing in the prisoner's presence. The maximum duration of solitary confinement was 14 days, but it could not be imposed on a prisoner for more than seven consecutive days, followed by an interval of at least seven days.

48. Mr. BARDENSTEIN (Israel), replying to questions under item 16 of the list, said that there were a number of legislative provisions for the protection of women who were forced to work as prostitutes as a result of coercion or fraud. The main problem was that the authorities were not always aware of those situations, since the women were reluctant to file complaints. However, it sufficed for someone to report such a situation to the police for a criminal action to be set in train. In addition, a number of private bodies provided legal assistance to the victims, whose numbers had regrettably grown in recent years. One such organization, which had existed in Israel since 1995, was a branch of the International Abolitionist Federation, which concerned itself exclusively with prostitution-related matters. Lastly, a number of governmental and municipal services could also help women who were victims of that type of situation.

49. Mr. SCHOFFMAN (Israel), replying to questions asked under item 17 of the list, said that the six-month period of administrative detention could be extended indefinitely, but that each extension must be approved by the President or Deputy President of the Supreme Court; the decision could be appealed to that Court and, beyond three months, the Supreme Court periodically examined the propriety of the extension. Nor could persons subject to that regime be detained without charge for an unlimited period; the competent authorities had to justify the need to extend the detention to a judge. No Israeli resident was detained under an administrative detention order. Conversely, the measure was applied to 86 persons from the occupied territories, and to the Lebanese concerning whom the Committee had raised a question under item 20 of the list. To the question whether the review procedures differed in the occupied territories and Israel, the reply was affirmative, pursuant to an order dating back to the beginning of the intifada. Contrary to the procedure established in Israel, review of the propriety of an administrative detention ruling was no longer automatic in the occupied territories, but had to be sought by the detainee or his counsel. Inasmuch as the number of persons held in administrative detention was declining, there were plans to revert to the previous provisions, which were

modelled on the legislation applied in Israel, save in regard to the deadline within which the decision must be reviewed, which was 48 hours in Israel, as opposed to 96 hours in the occupied territories.

50. Mr. BLASS (Israel), replying to questions under item 18 of the list, concerning enforcement of article 9 of the Covenant, pointed out that upon ratifying the Covenant, Israel had made a declaration regarding the maintenance of a state of emergency for security reasons. For certain security-related offences the time limit for the first appearance before a judge could be a few days, even 15 days in the case of treason or espionage, which had extremely grave implications for State security. Fortunately, however, such cases were very rare. Enforcement of paragraph 3 of article 9 of the Covenant should therefore be viewed in the light of Israel's declaration concerning the maintenance of the state of emergency. He pointed out, nonetheless, that evidence permitting a person to be kept in detention for 15 days without being brought before a judge needed to be examined by a magistrate, who ruled on the continued detention for such a long period.

51. Concerning the question of information that might be withheld from a detainee's counsel, he pointed out that in accordance with evidence procedures, a ministry could issue a certificate declaring certain evidence to be confidential. However, the certificate was subjected to judicial control which, in the case of a breach of security, was exercised by a Supreme Court judge. The court hearing the case could invalidate the certificate and order the evidence to be communicated to the detainee or his counsel. In all cases, if the court established that an item of evidence would prove the accused's innocence, it required that it be communicated to him. In that event, it was not unusual for the prosecution to withdraw the indictment in order to protect the life of the informer or informers.

52. To the question whether the safeguards contained in article 9 of the Covenant applied to Palestinians detained by the Israeli authorities, he replied that that in principle was so. The safeguards established in the Geneva Conventions and those set forth in article 9 of the Covenant both applied to Palestinians. However, as he had said earlier, security reasons could require a person to be detained in the occupied territories for 96 hours before appearing before a judge. The detention could be extended for a further 96 hours by decision of a senior police officer. However, that did not often occur and the person was usually brought before a judge at the earliest opportunity.

53. Replying to item 19 of the list, he explained that all persons subject to trial in military courts under the Defence (Emergency) Regulations were initially brought before a judge in the civil courts and could later be handed over to a military tribunal, which might order his detention. However, the detention could not be motivated by the exigencies of the investigation, but only occurred at the trial stage. Concerning the type of offence that came exclusively under military jurisdiction, he referred Committee members to provisions 57 to 65 of the aforementioned Regulations, explaining that a person could be tried for the same crime in the military and the civil courts. Civilians were subject to those Regulations; they could be tried in the military courts, but only in cases where the offence constituted a breach of security. Any person detained under the Defence (Emergency) Regulations had

the right to be represented by counsel, and examined by a doctor immediately following his arrest. However, authorization to communicate with counsel was occasionally withheld during the early days following the arrest. In the case of a security-related offence, the law currently in force in Israel established a maximum period of 21 days between arrest and first contact with a lawyer. For such a long period the agreement of a district judge was necessary. Families were of course notified of the arrest and often made direct contact with the lawyer, who then sought authorization from the district court or the Supreme Court to contact his client. The appropriate judicial authority was obliged to reply within 48 hours at the most.

54. Mr. SCHOFFMAN (Israel), in connection with the first question under item 20 of the list, repeated his earlier reply to the effect that the Israeli forces were not responsible for the detention without trial of Lebanese in the Al-Khian prison and other detention centres in southern Lebanon. He considered the ruling of the Supreme Court on Administrative Appeal 10/94, which Committee members appeared to have in English translation, to be quite explicit. He would merely point out that, inasmuch as Israeli prisoners of war had been held for years now, with their exact whereabouts unknown, the competent authorities had deemed it wise to keep in detention several Lebanese whose fate would be discussed during negotiations for the release of the Israeli prisoners of war. It was the view of the Supreme Court that to release those Lebanese would seriously compromise the outcome of the negotiations.

55. Mr. BARDENSTEIN (Israel), replying to questions under item 21 of the list, said that, according to information from the police, the standards established in the new statutory provisions governing detention conditions were fully applied, with two exceptions: the requirement of one bed per detainee, and compulsory segregation of convicts and defendants. However, it was expected that both those deficiencies would be remedied within a year or so. The transfer of security detainees to prison establishments was contingent upon practical considerations; in other words, they were transferred as soon as places became free.

56. Lastly, concerning the programmes and facilities for promoting the rehabilitation of juvenile detainees, he stressed that the Prisons Service organized four programmes for the rehabilitation of convicted minors. All detainees were enrolled in a rehabilitation programme six months prior to their release. Counselling and psychological help were also provided, as were classes in Arabic, devised by the Ministry of Education. All minors had the same right to family visits as adult detainees. However, those who had committed security-related offences were kept separate, did not benefit from fully-fledged rehabilitation programmes, and were not authorized to leave the premises. That apart, they were subject to the same treatment and detention conditions as other juvenile detainees and enjoyed the same rights.

57. The CHAIRPERSON thanked the Israeli delegation for its replies and announced that the Committee would continue its consideration of the initial report of Israel (CCPR/C/81/Add.13) at a forthcoming session.

The meeting rose at 6 p.m.